



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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PAUL R. LEPAGE
GOVERNOR

DARRYL N. BROWN
COMMISSIONER

MEMORANDUM

TO: Board of Environmental Protection
FROM: Jamie Tansey, BHMSWC
DATE: March 17, 2010
RE: Post for Adoption: Minor Revisions to Chapter 425, the *Asbestos Management Regulations*

Statutory and Regulatory References:

38 MRSA Chapter 12-A "Asbestos" authorizes the Department to ensure that those engaged in management and abatement of asbestos-containing materials are properly trained, supervised and directed to protect the public health. Management and abatement include inspection, monitoring, design, removal, training, and analysis. Specifically, Section 1273 prohibits persons from engaging in asbestos abatement activities unless they are licensed or certified and prohibits those activities unless the Department is notified at least 5-days in advance of the activity. Section 1274-A authorizes the Department to adopt and amend rules for licensing and certification. Section 1275 authorizes the Department to develop rules for approval of asbestos training courses. Section 1278 allows the Department to collect licensing and notification fees. Finally, Section 1280 permits the Department to adopt rules for acceptable work practices for those persons engaged in asbestos activities. Pursuant to these applicable sections, the Board adopted Chapter 425, *Asbestos Management Regulations*, in May 2004.

Location/Applicability: Statewide.

Rulemaking Process:

As noted at the Board's public hearing on the proposed revisions to Chapter 425, Asbestos Management Regulations on November 18, 2010, we have worked over the last year to develop the final draft you now have in front of you. Early 2010, an informal draft of proposed changes to the rule was distributed to the regulated community to gain their thoughts and feedback, both verbally and in writing. In addition, staff held two meetings to solicit input. Draft changes of the proposed rule were posted by the Board for rule-making on October 7, 2010. Notice of the rule-making and public hearing was published on October 27th in the Bangor Daily News, Kennebec Journal, Lewiston Daily Sun, Waterville Morning Sentinel and Portland Press Herald. Notice also was mailed to each person who previously had filed a written request for notice of DEP rulemaking. In addition, all DEP-licensed asbestos professionals were notified by mail on

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October 25th regarding the November 18th public hearing and of the opportunity to submit written comments to the department on the proposed revisions by November 29th. Comments were received from two parties.

Issues:

The Department proposed revisions to Chapter 425 to accomplish several objectives:

- to simplify and clarify the rule,
- to promote the use of “risk-based” standards to regulate asbestos more effectively in areas of greatest risk for exposure,
- to integrate changes to standard industry practice that have evolved over the past 6 years, and
- to update the notification, licensing and certification fees to be consistent with current Maine statutory requirements.

As reflected in the “Response to Comments” document, comments were received from 2 parties. The one substantive issue on which we received comments was on subsection 6.B, the proposal to modify the number of samples that are to be collected during an inspection and the subsequent analysis of those samples. Based on the comments received, the Department has modified this section to provide for sampling and analytical flexibility while ensuring that building owners are adequately informed when additional samples are collected and more sophisticated and expensive analytical procedure are used in sample analysis. Additional changes were made to the rule in response to comments received. The rationale for the final regulatory recommendation is more fully discussed in the “Response to Comments” document. Finally, formatting edits were made to make the rule consistent with the Department’s legal citation and rule writing guidelines.

Department Recommendation:

The Department recommends that the Board adopt the proposed revisions to Chapter 425, as revised in response to comments received.

Estimated Time of Presentation:

10 minutes